

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CLAUD CALVIN YOUNG and DORIS YOUNG :	CIVIL ACTION
v. :	
:	
:	
UNITED STATES OF AMERICA, ET AL. :	NO. 02-343

MEMORANDUM

Padova, J.

October 15, 2002

Plaintiffs have brought this personal injury suit against the United States, Northampton Township, Stephen and Joan Haegele, and Bonnie H. Nolte, arising out of an automobile accident which occurred on August 11, 2000. Before the Court is Defendant United States of America's Motion to Dismiss for Lack of Subject Matter Jurisdiction or, Alternatively, for Summary Judgment. For the reasons which follow, Defendant's Motion is granted in part and denied in part.

I. BACKGROUND

On the afternoon of August 11, 2000, Claud Calvin Young ("Young") was driving on Sackettsford Road in Northampton Township, Bucks County, Pennsylvania approaching a sharp curve to the right. Pl.'s Ex. B at 22, 42-43. It was raining. Id. at 22. As Plaintiff came around the curve, he saw a United States Postal Service mail truck stopped on the road in front of him. Id. at 43, 50-51. There is evidence that the mail truck was blocking the road. Pl.'s Ex. C at 5. He swerved into the opposing lane of Sackettsford Road to avoid hitting the mail truck and collided with

a cement mixer going in the opposite direction. Pl.'s Ex. B at 43. He was severely injured as a result of the accident.

Sackettsford Road is a two lane road with one lane in each direction. Id. at 42. The speed limit on Sackettsford Road is 40 m.p.h. Pl.'s Ex. F at 24. There is an advisory sign before the curve to advise traveling motorists to negotiate the curve at 30 m.p.h. Id. at 64-66. Young was driving 30 m.p.h. Pl.'s Ex. B at 39.

The mail truck was stopped in the vicinity of the mailbox for 743 Sackettsford Road. Pl.'s Ex. C at 7. 743 Sackettsford Road is located on the north side of Sackettsford Road. Id. at 5. On August 11, 2000, the mailbox for 743 Sackettsford Road was located on property owned by Bonnie Nolte on the south side of Sackettsford Road because the Postal Service delivered mail on the south side of that portion of Sackettsford Road. Pl.'s Ex. N at 5, 9-10, Pl.'s Ex. H. The mailbox had been located on Nolte's property for approximately 55 years. Pl.'s Ex. E at 23-24. At some time prior to the accident, the owners of 743 Sackettsford Road had asked the postmaster to allow them to move their mailbox onto their property on the north side of the road and that request was denied. Pl. Ex. N at 11-12.

II. MOTION TO DISMISS

The Complaint alleges two causes of action for negligence (Counts I and V of the Complaint) against the United States for:

(a) Improperly stopping, parking or standing a postal service delivery vehicle in the eastbound lane of Sackettsford Road, as aforesaid, in violation of the Motor Vehicle Code of Pennsylvania, including inter alia, 75 Pa.C.S. § 3351;

(b) Improperly blocking the eastbound lanes of Sackettsford Road as aforesaid, without leaving an unobstructed width of the highway opposite the vehicle for the free passage of other vehicles, in violation of the Motor Vehicle Code of Pennsylvania, including inter alia, 75 Pa.C.S. § 3351;

(c) Improperly stopping on a highway, blocking the eastbound traveling lanes of the highway, at a point where the postal delivery vehicle was not visible from a distance of 500 feet for vehicles traveling in the eastbound direction on that highway, in violation of the Motor Vehicle Code of Pennsylvania, including inter alia, 75 Pa.C.S. § 3351;

(d) Failure to operate the mail vehicle in a safe manner consistent with the Rules of the Road and the Motor Vehicle Code of Pennsylvania;

(e) Failure to recognize the danger to the traveling public in stopping a postal vehicle on a sharp horizontal curve with inadequate sight distance, contrary to established standards and with disregard for the rights, safety and position of the plaintiff herein and other motorists at the time and location aforesaid;

(f) Failure to monitor the mail route and location at 743 Sackettsford Road, Warminster post office, Northampton Township, Pennsylvania, contrary to established standards, for hazards to other drivers posed by stopping a postal vehicle on a sharp, horizontal curve, and with disregard for the rights, safety and position of the plaintiff herein and other motorists at the time and location aforesaid; and,

(g) Allowing the placement of, and failing to monitor the location, installation and operation of, the aforesaid mailbox at 743 Sackettsford Road on the inside of the aforesaid sharp horizontal curve and in an area with restricted sight distance, contrary to established standards, making the road dangerous for the plaintiff and other drivers.

Compl. ¶ 25.

The Government has moved to dismiss this action as against it for lack of subject matter jurisdiction because the location of mailboxes is a discretionary determination by the United States Postal Service which is protected by the "discretionary function" exception to the Federal Tort Claims Act, 28 U.S.C. § 2680(a).

A. Standard of Review

Since the Government has made a factual challenge to the Court's subject matter jurisdiction over Plaintiffs' negligence claim, the Court is not "confined to the allegations in the complaint . . . and can look beyond the pleadings to decide factual matters relating to jurisdiction." Cestonara v. United States, 211 F.3d 749, 752 (3d Cir. 2000). Although Plaintiffs have the burden of showing that their claim falls within the scope of the Federal Tort Claims Act, In re Orthopedic Bone Screw Prod. Liab. Litig., 264 F.3d 344, 361 (3d Cir. 2001), the Government has the burden of proving that the discretionary function exception applies. Cestonara, 211 F.3d at 756 n.5.

The Federal Government is immune from suit except as it has consented to be sued. Antol v. Perry, 82 F.3d 1291, 1296 (3d Cir.

1996). The United States Postal Service is an agency of the United States and, therefore, is immune from suit unless the United States has waived this immunity. In re University Medical Center, 973 F.2d 1065, 1085 (3d Cir. 1992). The federal government must unequivocally consent to be sued and the consent must be construed narrowly in favor of the government. Id. (citations omitted). "The terms of its consent to be sued in any court define the court's jurisdiction to entertain suit." Bialowas v. United States, 443 F.2d 1047, 1048 (3d Cir. 1971). The federal government has waived its immunity pursuant to the Federal Tort Claims Act "for injuries 'caused by the negligent or wrongful act or omission of any employee of the Government ... under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.'" In re Orthopedic Bone Screw Prod. Liab. Litig., 264 F.3d at 361-62 (quoting 28 U.S.C. § 1346(b)(1)).

There is an exception to this waiver for actions caused by certain types of discretionary acts of government employees. The discretionary function exception to the Federal Tort Claims Act, 28 U.S.C. § 2680(a), states that:

The provisions of this chapter and section 1346(b) of this title shall not apply to--

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the

exercise, or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

28 U.S.C. § 2680. The discretionary function exception applies when:

(1) the act involves an "element of judgment or choice" and (2) that discretion "is of the kind that the discretionary function exception was designed to shield." Berkovitz v. United States, 486 U.S. 531, 536 (1988). This inquiry does not focus on anyone's subjective intent in the exercise of that discretion, however. Instead, the inquiry focuses on "the nature of the actions taken and on whether they are susceptible to policy analysis." United States v. Gaubert, 499 U.S. 315, 325 (1991).

In re Orthopedic Bone Screw Prod. Liab. Litig., 264 F.3d at 363.

B. Discussion

The Government argues that the United States Postal Service's decision to locate the mailbox for 743 Sackettsford Road on the south side of the street is protected by the discretionary decision exception from liability pursuant to the Federal Tort Claims Act. The relevant postal regulations give the postmaster the option to require that curbside mailboxes be placed only on one side of the street. Postal Operations Manual at Subpart 631.31, 632.524. The evidence before the Court on this Motion demonstrates that the Postal Service decides where mail boxes are placed and when they may be moved. The Postal Service decides where a mailbox will be located when a house is first built after an investigation of the

site. Pl.'s Ex. G at 9-10, 14, 24. The mailboxes located along Sackettsford Road are all curbside and, although some of the mail delivery on Sackettsford Road is on both sides of the street, the area including 743 Sackettsford Road only has delivery on the south side of the street. Id. at 9, Pl.'s Ex. H. The Postal Service utilizes one side of the street delivery for reasons of efficiency. Pl.'s Ex. G. at 28-29. Mailbox locations are not often changed after first being selected by the post office, but customers have been asked to move their mailboxes for safety reasons. Id. at 11-12. The Postal Service is generally reluctant to relocate mailboxes due to a need to keep delivery routes standard and established. Id. at 11 and 37.

The Court finds, based upon the evidence on the record of this motion, that decisions regarding the placement of the mailbox for 743 Sackettsford Road and the relocation of that mailbox are discretionary decisions of the Postal Service and, therefore, meet the first condition for application of the discretionary decision exception. See Shrieve v. United States, 16 F. Supp. 2d 853, 858 (N.D. Ohio 1998) (finding that the decision to require that curbside mailboxes be placed only on the east side of a road was a discretionary decision which "met the first condition for invoking the discretionary function exception."). The decision of where to place a mailbox, and whether that mailbox should be moved, also fulfills the second condition:

Decisions concerning the configuration of mail delivery routes are part and parcel of what Congress described as "... the responsibility of the Postal Service to maintain an efficient system of collection, sorting, and delivery of the mail nationwide." 39 U.S.C. § 403(b)(1). Each decision made with regard to the level of delivery and service provided to a particular set of postal customers affects the economic efficiency of the Postal Service. Each type of residential postal delivery service (door, box at curb, box across street, cluster box at another location, or general delivery at a post office), has consequences for the Postal Service's economic efficiency, the safety of letter carriers and customers, and the satisfaction of postal patrons. The myriad of administrative decisions of this sort made daily by Postal Service officials are exactly the type of decisions the discretionary function exception was designed to shield from review under the Federal Tort Claims Act.

Id. at 858-59. Since the decision of where to place the mailbox for 743 Sackettsford Road was a discretionary decision of the United States Postal Service, subject to the discretionary decision exception to the Federal Tort Claims Act, Plaintiffs' negligence claim against the United States is dismissed for lack of subject matter jurisdiction to the extent that it is based upon the location of the mailbox. Although the Government asserts that all of Plaintiffs' claims that the Government was negligent in stopping the mail truck in the middle of Sackettsford Road derive from the location of the mailbox, and should be dismissed, it is clear that Plaintiffs' claims regarding the operation of the mail truck, subparagraphs 25(a)-(e) of the Complaint, are distinct from those

claims arising solely from the location of the mailbox, subparagraphs 25(f) and (g). Accordingly, The Government's Motion to Dismiss Plaintiffs' claims against the Government, Counts I and V, is granted with respect to claims based upon subparagraphs 25(f) and (g) of the Complaint and denied with respect to claims based upon subparagraphs 25(a)-(e).

III. MOTION FOR SUMMARY JUDGMENT

A. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular

issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Evidence introduced to defeat or support a motion for summary judgment must be capable of being admissible at trial. Callahan v. AEV, Inc., 182 F.3d 237, 252 n.11 (3d Cir. 1999)(citing Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co., 998 F.2d 1224, 1234 n.9 (3d Cir. 1993)). The Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255. However, "mere allegations, bare assertions or suspicions are not sufficient to defeat a motion for summary judgment." Felton v. Southeastern Penn. Transp. Auth., 757 F. Supp. 623, 626 (E.D. Pa. 1991) (citation omitted).

B. Discussion

Plaintiffs' negligence claims against the Government, based upon subparagraphs 25(a)-(e) of the Complaint, allege that the

Government was negligent in stopping the mail truck in the middle of Sackettsford Road on a blind curve. The Complaint alleges that the Government was negligent per se for stopping the truck in violation of 75 Pa. Cons. Stat. Ann. § 3351 and also negligent by failing to operate the mail truck in a safe manner. Section 3351(a) states as follows:

(a) General rule.--Outside a business or residence district, no person shall stop, park or stand any vehicle, whether attended or unattended, upon the roadway when it is practicable to stop, park or stand the vehicle off the roadway. In the event it is necessary to stop, park or stand the vehicle on the roadway or any part of the roadway, an unobstructed width of the highway opposite the vehicle shall be left for the free passage of other vehicles and the vehicle shall be visible from a distance of 500 feet in each direction upon the highway.

75 Pa. Cons. Stat. Ann. § 3351.

The Government argues that Section 3351 does not apply in this case because the mail truck was stopped for a proper purpose, delivering the mail. Johnson v. Angretti, 73 A.2d 666, 68 (Pa. 1950) (noting, in examination of a prior version of this statute, that it "was not intended to prohibit the momentary stopping of a vehicle or the temporary obstruction of a highway if for a proper purpose and under proper circumstances."). The Government also maintains that the undisputed evidence shows that the mail truck was stopped for a proper purpose, delivering the mail, and was operating under proper circumstances because it was pulled as far

as possible over to the side of the road and had its flashers and strobe light on. Gov't Ex. 5 at 74-75; Gov. Ex. 6 at 7; Gov. Ex. 8 at 7.) However, there is evidence on the record of this Motion that the mail truck was not pulled over as far as possible to the side of the road and did not have its flashers and strobe light on at the time of the accident. Robert Millar, who was driving directly ahead of Young on Sackettsford Road and passed the mail truck by crossing onto the left lane of Sackettsford Road immediately prior to the accident, testified at deposition that the mail truck was stopped in the middle of a blind curve and he could not see it until he was about 20 feet away. Pl.'s Ex. C at 7 and 19-20. He also testified that the mail truck was stopped with all four wheels on the road, without any lights on, about 10 feet from the mailbox. Id. at 7-8 and 20. He also stated that, in order to get around the mail truck, he had to cross the double yellow line in the middle of the road with all four wheels of his vehicle. Id. at 15.

Viewing this evidence in the light most favorable to Plaintiffs, there is a genuine issue of material fact for trial regarding whether the mail truck was operated negligently or under proper circumstances. Accordingly, the Government's Motion for Summary Judgment is denied in connection with Plaintiff's allegations that the mail truck was negligently stopped on Sackettsford Road.

The Government also contends that it is entitled to summary judgment because the accident was caused by Young's failure to comply with 75 Pa. Cons. Stat. Ann. §§ 3361,¹ 3305² and 3306(a)(1).³ The Government argues that Young caused the accident by driving around the curve without regard for potential danger and crossing the middle of the road into oncoming traffic. The Government's expert, Consulting Engineers and Scientists, Inc., opined that Young should have been able to see the mail truck 160

¹Section 3361 states that: "No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, nor at a speed greater than will permit the driver to bring his vehicle to a stop within the assured clear distance ahead. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions." 75 Pa. Cons. Stat. Ann. § 3361.

²Section 3305 states that: "No vehicle shall be driven to the left side of the center or marked center line of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken." 75 Pa. Cons. Stat. Ann. § 3305.

³Section 3306(a)(1) states that: "(a) General rule.--No vehicle shall be driven on the left side of the roadway under any of the following conditions: (1) When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction." 75 Pa. Cons. Stat. Ann. § 3306(a)(1).

feet before he reached it and, under the prevailing road conditions, if he had been driving 30 m.p.h., he could have brought his car to a stop within 110 and 130 feet without hitting the mail truck or crossing over into the opposing lane of traffic. Gov. Ex. 1, Expert Report of Consulting Engineers & Scientists, Inc., at 6-10.

There is evidence before the Court on this motion that Young was traveling 30 m.p.h. and was not able to see the mail truck in time to stop without hitting the mail truck or crossing over to the opposing lane of traffic. Pl.'s Ex. B at 39-44. There is also evidence that Millar, who was driving directly in front of Young on Sackettsford Road, was traveling 30 m.p.h. and did not see the mail truck stopped on Sackettsford Road until he was 20 feet away and had to cross over the double yellow line in order to avoid it. Pl.'s Ex. C at 7-20. Viewing this evidence in the light most favorable to Plaintiffs, there is a genuine issue of material fact for trial with regard to whether Young was negligent and, if so, whether his negligence contributed to the accident. Accordingly, the Government's Motion for Summary Judgment is denied in connection with its argument that Young was contributorily negligent.

An appropriate order follows.

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ORDER

AND NOW, this day of October, 2002, in consideration of Defendant United States of America's Motion to Dismiss or, in the Alternative, for Summary Judgment (Docket No. 25) and Plaintiffs' response thereto, **IT IS HEREBY ORDERED** that the Motion is **GRANTED** in part **and DENIED** in part as follows:

1. Defendant's Motion to Dismiss for lack of subject matter jurisdiction is **GRANTED** with regard to Plaintiffs' claims for relief based on subparagraphs 25(f) and (g) of the Complaint;
2. Defendant's Motion to Dismiss for lack of subject matter jurisdiction is **DENIED** with regard to Plaintiffs' claims for relief based on subparagraphs 25(a)-(e) of the Complaint;
3. Defendant's Motion for Summary Judgment is **DENIED**

BY THE COURT:

John R. Padova, J.

